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July 9, 2002

The Honorable Gale Norton
Secretary
The U.S. Department of the Interior
Washington, DC 20240

Dear Secretary Norton:

I am writing to request immediate action in response to a new, detailed and disturbing report from the General Accounting Office (GAO) which exposes some glaring weaknesses in the way the Interior Department leases and permits oil and gas activity on public lands on the North Slope of Alaska.

The GAO report, Alaska's North Slope: Requirements for Restoring Lands After Oil Production Ceases (attached) finds that oil company liability for removing existing oil and gas infrastructure and restoring the tundra on the North Slope of Alaska may run as high as $6 billion, but existing bonds will cover only a fraction of that cleanup.

This raises at least two major public policy issues. First, the GAO report makes clear that oil companies are refusing to publicly disclose the soaring cost of their existing liability on the North Slope, a troubling accounting issue that needs to be addressed before it is sprung on unsuspecting investors, workers and the public. Second, the GAO report is an indictment of the existing federal and state permitting process, which allows private oil and gas development on public lands using permits that are so vague and the financial assurances so inadequate that the public interest in restoring these lands may never be redeemed.

I am writing to you today with particular regard to the second issue.

As you know, much of the existing production on the North Slope is on state-owned, not federal, lands. Nevertheless, even on those state-owned lands, federal wetlands permits are required, issued by the U.S. Army Corps of Engineers. As the report notes, "[a]lmost the entire North Slope is designated wetland." (page 30) Furthermore, activity is now increasing on lands controlled directly by the federal government on behalf of all the people of the United States. Those lands are managed by various agencies of the Department of Interior. In particular, the National Petroleum Reserve-Alaska (NPR-A) is managed by Interior's Bureau of Land Management (BLM); the Outer Continental Shelf (OCS) is, managed by Interior's Minerals Management

Service (MMS); and the Arctic National Wildlife Refuge (where oil and gas development is prohibited) is managed by Interior's Fish and Wildlife Service (FWS.)

The report details the failings of each of these divisions of the Department of Interior. It particularly faults the Bureau of Land Management and includes the following recommendation to you, as the Secretary of Interior:

> "In order to ensure that the lands of the National Petroleum Reserve-Alaska are properly restored after oil and gas activities cease, we are recommending that the Secretary of Interior instruct the Director of the Bureau of Land Management to issue specific dismantlement, removal and restoration requirements that will allow the Bureau to meet its overall goal of returning the land to a condition that will sustain its previous uses including fish and wildlife habitat and subsistence uses. In addition, we recommend that the Bureau review its existing financial assurances for oil and gas activities in the National Petroleum Reserve-Alaska to determine whether they are adequate to assure the availability of funds to achieve its overall restoration goal." (page 78)

Other relevant findings of the report include:

FEDERALLY-PERMITTED STATE-OWNED LANDS

- None of the five oil companies on the North Slope were willing to provide their estimated DR&R liability, saying the estimates were "for accounting purposes only," not for public review. (page 50)
- The U.S. Army Corps of Engineers issues permits for wetlands, including wetlands on the Prudhoe Bay lands owned by the State of Alaska. "Almost the entire North Slope is designated wetland." (page 30) Nevertheless, the Army Corps "prefers" that the State have primary responsibility with respect to DR&R requirements and less than one percent of the 1,100 permit issued by the Corps on the North Slope include specific restoration requirements. (pages 34,40-41)
- Even though the DR&R requirements have been deferred to the State of Alaska, the State's requirements "offer no specifics", are not fixed, and are largely discretionary. (pages 33-35)
- Two oil companies - BP and Phillips petroleum - expressed a preference for more specific DR&R guidance to relieve uncertainty regarding their obligations (page 44).
- Alaska's lack of guidance is not unique, although New Mexico, Oklahoma, Pennsylvania and Wyoming appear to be much more specific. (page 47)
- Available evidence suggests that the total liability for DR&R is in the billions of dollars. (page 49) Estimates based on investment level and cost percentage yield a DR&R estimate of $2.7 billion to $6 billion. (page 51)
- Alaska's bonding requirements, while higher than other oil-producing states (page 58), are woefully insufficient. Bonding requirements sufficient to cover a single oil well are accepted as sufficient for entire oil fields. (page 55)

FEDERALLY OWNED LANDS

- BLM has yet to develop DR&R requirements for oil production in the NPR-A. (page 63)
- MMS requires specific well-plugging and abandonment plans for offshore wells, as well as restoration, including the removal of all obstructions in the water. (page 64)
- Only MMS has implemented a general bonding structure that provides for higher bond amounts as the scope of oil industry activity increases. (page 69)
- FWS requires removal of all structures and equipment from wildlife refuges and restoration of the area to its original condition. HR 4, the House Energy bill pending in conference committee, would "compromise" this guidance by adding the phrase "or to a higher and better use." (page 68)
- It will cost more than $100 million just to plug abandoned Navy wells from the 40s and 50s in the NPR-A. (page 73)
- DR&R requirements for Trans-Alaska Pipeline, for abandoned surface mines, and for abandoned nuclear powerplants are much more specific and explicit for these industries than for the oil and gas industry on the North Slope.(pages 74-76)

CONCLUSIONS

- "The need for federal dismantlement, removal and restoration requirements and assurances that funds will be available to implement those requirements is becoming increasingly important." (page 77)
- "The BLM and the FWS need to ensure that their financial guarantees are adequate in case a company is unwilling or unable to pay for returning the land to whatever standard has been established. To do otherwise would leave the taxpayer with an unacceptable risk." (page 78)

On May 22, 2002, I note that Robert Lamb, on behalf of Assistant Secretary P. Lynn Scarlett, wrote a letter to the GAO regarding the findings and recommendations regarding the BLM, noting that DOI "concurs" with the GAO findings and recommendations regarding the GAO (page 91.), but intends to meet those responsibilities "by attaching special stipulations and conditions of approval on a lease-by-lease basis." Moreover, by this letter the DOI indicates that it will undertake a review of the "existing financial assurances for oil and gas activities in the National Petroleum Reserve-Alaska to determine if they are adequate to ensure that funds will be available to achieve its overall restoration goal. This review will focus on protecting the environment and taxpayers should lessees default."

In light of these two concurrences, I have the following questions:

1. Two weeks after the Scarlett letter was sent to the GAO, the DOI conducted a lease sale in the NPR-A.
   - What special stipulations and conditions for approval did you included in each of the lease agreements associated with this sale?

- Were these stipulations and approvals, if any, intended to respond to the findings and recommendations of this report? If not, why not?
- Why has the DOI chosen not to undertake a rulemaking to upgrade the extremely general and vague nature of existing DR&R requirements, rather than continuing to treat the problem on an ad hoc, lease-by-lease basis?
- What assumptions were you making with regard to the potential DR&R liability regarding each of these lease agreements?
- How did you arrive at those estimates?
- What is the status of your review of existing financial assurances? Please indicate when that review will begin and who is responsible for its conduct and completion.

It is my hope that this GAO study prompts DOI to make permanent changes in the current DR&R requirements, changes that will give participants specificity about what is required regarding DR&R, and taxpayers the protection from the risk of inadequate bonds to cover the enormous back-end costs of DR&R. The failure to impose those requirements in the leases we are issuing today could guarantee permanent damage on these ecologically-sensitive public lands for centuries to come.

I look forward to your reply.

Sincerely,

Ed Markey

Edward J. Markey
Member of Congress